IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 8 OF 2003

Union of India,
through the Executive
Engineer, Goa Central
Divn. Central Public
Works Department,
Medical College Complex,
Bambolim, Goa. ... Petitioner.

Versus

M/s. Sugam Construction (P)
Ltd., a Private Limited
Company, incorporated under
the Companies Act, 1956, and
having their office at 1934/57,
Subhash Nagar, 13th Road,
Chambu, Mumbai 400 071, through
its Director, Shri Pradeep G.
Shrinarpure, r/o Chembur,
Mumbai 400 071, Maharashtra. ... Respondent.

Shri V. P. Thali, Sr. Central Govt. Standing Counsel for the petitioner.

Shri S. G. Dessai, Senior Advocate with Shri R. B. D'Sa, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 6th June, 2003.

ORAL ORDER

The objection, if filed, would have resulted in the disposal of the petition. Considering that the Civil Revision Application is maintainable.

2. The petitioner herein was the judgment-debtor. In arbitral proceedings an Award came to be passed in favour of the decreholder which had become final and, consequently became executable. As according to them the amount was not paid, they applied for execution. There is no dispute that on lst February, 2002, the

respondent herein had withdrawn the amount which was deposited alongwith accrued interest. The petitioner herein raised an objection that as it had deposited the amount on 20th July, 1999, before the Civil Court and thereafter that amount on account of intervening circumstances had been deposited before the District Court, no further interest would be payable after that date. This objection which was raised was rejected by the learned Executing Court. The contention of the decreeholder, respondent herein, pursuant to the application on 2nd May 2002, was that it was entitled to further interest as set out in the said application.

In this Civil Revision Application it is principally contended that the Order of the Executing Court is liable to be set aside, as considering the provisions of Order 21 Rule 1 Civil Procedure Code, the petitioners had deposited the money on 20th July, 1999, they were not liable to pay interest after 20th July, 1999. The learned counsel contends that the money was deposited in terms of Order 21 Rule 1 C.P.C. and if that be the case, the question of further interest would not arise. It is also pointed out that the learned Executing Court has proceeded to award interest at 18%, whereas the award had granted only interest at the rate of 14%.

3. After hearing learned counsel for the

parties, in my opinion the Order does not disclose any error or excess of jurisdiction. In the instant case, the petitioner herein deposited the money with a condition that the amount should not be withdrawn. The respondent herein was permitted to withdraw the amount against security by furnishing Bank Guarantee. Even against that Order, the petitioner herein preferred a review. By Order dated 1st April, 2000, the Order was reviewed and the earlier order permitting the respondent herein to withdraw the amount was recalled. In other words, the deposit made by the petitioner was towards security. A deposit under Order 21 Rule 1 C.P.C. has to be unconditional so as to enable the decreeholder to withdraw the same in satisfaction of the decree.

4. In my opinion, Order 21 Rule 1 C.P.C. can only be said to be satisfied if the petitioner had deposited the money without a condition and with notice to the respondent and the respondent then was at liberty to withdraw the amount in satisfaction of the decree. In the instant case, the amount was deposited with a condition. The amount was not available to the respondent. It, therefore, cannot be said to be a deposit within the meaning of Order 21 Rule 1 C.P.C. An amount deposited as security is not in satisfaction of the decree. That amount was as security in case the judgmentdebtor succeeded in whatever proceedings it may take. The deposit has to be

unconditional, (see **P.S.L. Ramanathan Chettiar & Ors. vs. O.R.M., P.R.M. Ramanmathan Chettiar AIR 1968 SC 1047**). In the instant case, though the money was not deposited pending appeal, it was deposited with a condition. The same principle must also apply to such deposit. It is only an unconditional deposit which the dcreeholder can withdraw, towards satisfaction of the decree which can be said to be a deposit under Order 21 Rule 1 C.P.C. For the aforesaid reasons, there is no merit in that contention which has to be rejected.

5. The only other challenge is that the Executing Court has proceeded on the footing that the interest has to be calculated at 18% from the date of the award. The parties agree that the interest payable is at 14% and to that extent the Order can be modified. In the light of that, interest on the amount awarded till payment would be at the rate of 14% only and not 18%. To that extent the impugned Order stands modified. The revision application stands disposed of with no order as to costs.

F. I. REBELLO, J.

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